

Decision No. C19-0135-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION
ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION ADDRESSING INTERVENTION,
GRANTING *AMICUS CURIAE* STATUS, DENYING
MOTIONS TO FILE REPLY, AND GRANTING
APPLICATION FOR *PRO HAC VICE* ADMISSION**

Mailed Date: February 1, 2019

Adopted Date: January 30, 2019

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. In this Interim Decision, the Commission considers how various third-parties will participate in this complaint proceeding. The Commission also addresses three motions seeking leave to file a reply, and one application for *pro hac vice* admission filed by an out-of-state attorney.

2. To date, 44 entities have filed to intervene or participate as *amicus curiae* in this two-party complaint proceeding. Were all the interventions granted, the administrative burden would unnecessarily complicate and slow the proceeding moving forward. We decided to hear this matter *en banc* to remove the procedural delays that can arise from an Administrative Law

Judge first hearing a matter. As well, we are mindful of our charge to “conduct . . . proceedings in such a manner as will best conduce the proper dispatch of business and the ends of justice.” See § 40-6-101(1), C.R.S. 2018. With these principles in mind, we turn to the filings before us.

3. Eight organizations moved only for *amicus curiae* status. Pursuant to Rule 1200, of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, all of them identified the jurisdictional question presented by this proceeding as the issue they would address. Some reserved the right to respond to additional questions that might arise. Tri-State Generation and Transmission Association Inc. (Tri-State) responded by asserting that such a reservation is inconsistent with Rule 1200(c), which requires a party to identify in its motion the issues it will address as an *amicus*, and would also “deprive the Commission of the opportunity to determine whether such additional legal argument would be useful.”¹ We appreciate Tri-State’s concern. To that end, we will reconsider limiting the issues *amicus curiae* may address as the questions in this proceeding, and their scope, become clearer.

4. In the interim, we will exercise our discretion and grant *amicus curiae* status to the eight organizations who requested it: Highline Electric Association, Y-W Electric Association, Mountain Parks Electric, Inc., Western Resource Advocates, San Juan Citizens Alliance, Southwest Energy Efficiency Project, Vote Solar, and Colorado Solar Energy Industries Association (COSEIA).

5. Regarding the 33 organizations that have moved us to exercise our discretion under Rule 1401 and permit them to intervene as parties to this proceeding, the best way for the Commission to balance the interest shown by these entities with the Commission’s need for an efficient proceeding is to deny the motions for permissive intervention but grant these

¹ Tri-State’s Response to Motion of Joint Conservation Parties and COSEIA at p. 2.

organizations *amicus curiae* status. Accordingly, we decline to allow permissive intervention but grant *amicus curiae* status to: La Plata Electric Association, Southeast Colorado Power Association, Inc., High West Energy, Wyrulec Company, Big Horn Rural Electrical Company, Carbon Power & Light, Garland Light & Power, K.C. Electric Association, Otero County Electric Cooperative, Inc., Central New Mexico Cooperative, Mora-San Miguel Electric Cooperative, Inc., Continental Divide Electric Cooperative, Socorro Electric Cooperative, Sierra Electric Cooperative, Inc., Gunnison County Electric Association, Inc., Southwestern Electric Cooperative, Columbus Electric Cooperative, Northern Rio Arriba Electric Cooperative, Inc., Wheatland Rural Electric Association, Springer Electric Cooperative, High Plains Power, Inc., Niobrara Electric Association, Inc., San Isabel Electric Association, Inc., Morgan County Rural Electric Association, Wheat Belt Public Power District, Midwest Electric Cooperative Corporation, Roosevelt Public Power District, Chimney Rock Public Power District, Panhandle Rural Electric Membership Association, White River Electric Association, San Luis Valley Rural Electric Cooperative, Poudre Valley Rural Electric Association, and Sierra Club.

6. Three organizations asserted that they may intervene as of right: United Power, Mountain View Electric Association, and the Colorado Energy Office (CEO). United Power and Mountain View Electric Association both request leave to permissively intervene, in the alternative. After reviewing their filings, we find that neither United Power nor Mountain View Electric Association met their burden to state the basis for the “legally protected right” that would entitle them to intervene as of right under Commission Rule 1401(b). *See* § 24-4-105(7), C.R.S. 2018; Rule 1500 Commission Rules of Practice and Procedure 4 CCR 723-1. We also deny their requests for permissive intervention for the administrative efficiency reasons articulated above. Having found that neither has intervened as of right, and denied their requests

for permissive intervention, we will grant both United Power and Mountain View Electric Association *amicus curiae* status.

7. The request to intervene as of right by CEO is different from the two requests discussed above because CEO has statutory authority to intervene in proceedings like this. *See* § 40-6-108(2), C.R.S. 2018. As Tri-State points out in its response, that statutory authority is premised on a timely filing; without a timely filing, Commission Rules for intervention of right and permissive intervention govern CEO's request to intervene. CEO acknowledges that its intervention filing was made after January 9, 2019, and explains that its new director was appointed January 14, 2019, and was unable to review this matter until January 17, 2019. The Commission finds that by providing statutory authority to intervene, the Colorado Legislature has acknowledged the importance of CEO's participation in these types of proceedings. Additionally, the reasons for CEO's delayed filing are compelling. This statutory authority sets CEO apart from the other entities who have filed in this proceeding, and, along with the compelling reasons for delay, constitutes good cause to waive on our own motion Rule 1401 with respect to CEO and to allow it to intervene as a party. *See* Rule 1003 (allowing the Commission to waive its rules when good cause exists to do so).

8. Nebraska Intervenors' Verified Motion Requesting Pro Hac Vice Admission is conditionally granted. Out-of-state attorney David Jarecke may practice before the Commission once the Commission receives, either from Mr. Jarecke or from the Office of Attorney Regulation Counsel (OARC), OARC's statement that Mr. Jarecke's *pro hac vice* application is

complete.² In all other respects, we find that Mr. Jarecke has complied with Rule 1201(a) and find good cause to grant the motion.

9. The Motion for Leave to File Reply to Complainants' Response to Petitions to Intervene filed by Mountain View Electric Association Inc. on January 24, 2019; Sierra Club's Motion for Leave to File a Reply in Support of Motion for Leave to Intervene filed on January 25, 2019; and the Motion for Leave to File a Reply to Complainant's Opposition to Movant's Petition for Intervenor Status, filed by the Joint Cooperative Movants on January 29, 2019, are denied.

10. Response time is waived for all motions addressed by this Decision.

II. **ORDER**

A. **It Is Ordered That:**

1. Sierra Club's Motion for Leave to Intervene or, in the Alternative, for Leave to Participate as Amicus Curiae filed on January 4, 2019, is granted in part, consistent with the discussion above.

2. The relief requested in the Notice of Intervention as of Right or Motion for Permission to Intervene of Mountain View Electric Association, Inc., filed on January 7, 2019, is denied. Mountain View Electric Association, Inc. will be an *amicus curiae*.

3. The Motion to Intervene of Poudre Valley Rural Electric Association, Inc., filed on January 7, 2019, is denied. Poudre Valley Rural Electric Association, Inc. will be an *amicus curiae*.

² The Commission acknowledges this requirement was satisfied by the Proof of Pro Hac Vice Registration for David Jarecke filed in this proceeding on January 14, 2019.

4. San Luis Valley Rural Electric Cooperative, Inc.'s Motion to Intervene or, in the Alternative, to Participate as an Amicus Curiae filed on January 8, 2019, is granted in part, consistent with the discussion above.

5. The Motion of Western Resource Advocates, San Juan Citizens Alliance, Southwest Energy Efficiency Project, and Vote Solar for Leave to Participate as Amici Curiae filed on January 9, 2019, is granted consistent with the discussion above.

6. The Joint Motion to Participate as Amicus Curiae of Highline Electric Association, Y-W Electric Association, Inc., and Mountain Parks Electric, Inc. filed on January 9, 2019, is granted consistent with the discussion above.

7. The Amended Joint Petition to Intervene filed by Southeast Colorado Power Association, Inc. (SECPA) (CO), High West Energy (WY), Wyrulec Company (WY), Big Horn Rural Electrical Company (WY), Carbon Power & Light (WY), Garland Light & Power (WY), K.C. Electric Association (CO), Otero County Electric Cooperative, Inc. (NM), Central New Mexico Cooperative, Inc (NM), Mora-San Miguel Electric Cooperative, Inc. (NM), Continental Divide Electric Cooperative (NM), Socorro Electric Cooperative (NM), Sierra Electric Cooperative, Inc. (NM), Gunnison County Electric Association, Inc. (CO), Southwestern Electric Cooperative (NM), Columbus Electric Cooperative (NM), Northern Rio Arriba Electric Cooperative, Inc. (NM), Wheatland Rural Electric Association (WY), Springer Electric Cooperative, Inc. (NM), High Plains Power, Inc. (WY), Niobrara Electric Association, Inc. (WY), San Isabel Electric Association, Inc. (CO), and Morgan County Rural Electric Association (CO) (the Joint Cooperative Movants) on January 11, 2019, is denied. The Joint Cooperative Movants will be *amici curiae*.

8. The relief requested in United Power, Inc.'s Notice of Intervention as of Right or, in the Alternative, Motion for Permission to Intervene or to Participate as Amicus Curiae filed on January 9, 2019, is granted in part consistent with the discussion above.

9. The Motion to Intervene filed by White River Electric Association, Inc. on January 9, 2019, and as corrected on January 10 and again on January 17, 2019, is denied. White River Electric Association, Inc. will be *amicus curiae*.

10. The Motion to Intervene on Behalf of Wheat Belt Public Power District, Midwest Electric Cooperative Corporation, Roosevelt Public Power District, Chimney Rock Public Power District, and Panhandle Rural Electric Membership Association filed on January 9, 2019, is denied. The filing parties will be *amici curiae*.

11. The Motion of the Colorado Solar Energy Industries Association for Leave to Participate as Amicus Curiae filed on January 11, 2019, is granted consistent with the discussion above.

12. The Motion to Intervene Out of Time of the Colorado Energy Office or, in the Alternative, for Leave to Participate as Amicus Curiae filed January 22, 2019, is granted consistent with the discussion above.

13. The Motion for Late Intervention and Entry of Appearance of La Plata Electric Association, Inc. filed on January 24, 2019, is denied. Counsel's entry of appearance is accepted. La Plata Electric Association, Inc. will be an *amicus curiae*.

14. Nebraska Intervenors' Verified Motion Requesting Pro Hac Vice Admission filed on January 9, 2019, is granted.

15. The Motion for Leave to File Reply to Complainants' Response to Petitions to Intervene filed by Mountain View Electric Association Inc. on January 24, 2019; Sierra Club's

Motion for Leave to File a Reply in Support of Motion for Leave to Intervene filed on January 25, 2019; and the Motion for Leave to File a Reply to Complainant's Opposition to Movant's Petition for Intervenor Status, filed by the Joint Cooperative Movants on January 29, 2019, are denied.

16. Response time is waived for all motions addressed by this Decision.

17. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 30, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

Commissioners

COMMISSIONER JOHN GAVAN RECUSED
HIMSELF.